

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

75-7441

United States Court of Appeals

FOR THE SECOND CIRCUIT

AMERICAN SMELTING & REFINING COMPANY,

Plaintiff,

— against —

S.S. IRISH SPRUCE, her engines, tackle, etc.,

Defendant,

— against —

IRISH SHIPPING LTD.,

Defendant-Appellant.

In the Matter of the Complaint of IRISH SHIPPING LTD.,
Plaintiff as Owner of the S.S. "IRISH SPRUCE", for
exoneration from or limitation of liability,

COMPANIA PERUANA DE VAPORES, S.A.,

Claimant-Appellant.

BRIEF OF APPELLANT
COMPANIA PERUANA DE VAPORES

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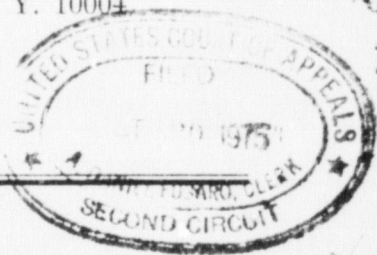


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BRIEF OF APPELLANT COMPANIA PERUANA DE VAPORES

Statement of the Issues Presented for Review

This appeal presents no issue for review, since it is merely a protective appeal the result of which is contingent upon the appeal of Irish Shipping Ltd.

Statement of the Case

The s/s Irish Spruce, whose stranding and loss gave rise to this litigation, was timechartered by her owner, appellant Irish Shipping Ltd., to appellant Compania Peruana de Vapores ("CPV"), which in turn issued bills of lading to appellees, the cargo interests. The decision below gave appellees judgment for their cargo loss against both Irish Shipping and CPV and gave CPV judgment against Irish Shipping for its damages. CPV's damages would include indemnity for any payment CPV may be required to make to cargo, CPV's defense costs, and the loss of CPV's bunkers and equipment aboard the vessel. The cargo and CPV damages have not yet, however, been fixed, since the judgment below was interlocutory, determining the merits only.

Timecharterer CPV, in effect a middleman in the transaction, prevailed against the shipowner, but lost as against cargo. The *net* result below, therefore, is quite satisfactory to CPV. This appeal is protective only, from that portion of the judgment which awarded cargo its damages against CPV, so that if the shipowner succeeds in *its* appeal, CPV will not be left holding the bag.

Argument

Since the sole basis for CPV's liability to cargo—the shipowner's failure to exercise due diligence to make the Irish Spruce seaworthy—is identical with the sole basis for the shipowner's liability to cargo (indeed, was brought about by it), if the shipowner is relieved of liability to cargo, then so must be CPV.

Conclusion

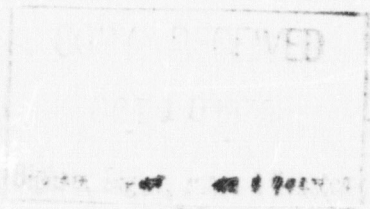
The judgment against CPV in favor of cargo should be reversed, with costs to CPV, if the shipowner succeeds in obtaining reversal of the judgment against it in favor of cargo.

Respectfully submitted,

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HEALY & BAILLIE
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